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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,369

03/12/2004

Elena V. Bolchakova

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MILA KASAN, PATENT DEPT.  
APPLIED BIOSYSTEMS  
850 LINCOLN CENTRE DRIVE  
FOSTER CITY, CA 94404

EXAMINER

HUTSON, RICHARD G

ART UNIT

PAPER NUMBER

1652

MAIL DATE

DELIVERY MODE

02/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,369	<b>Applicant(s)</b> BOLCHAKOVA ET AL.	
	<b>Examiner</b> Richard G. Hutson	<b>Art Unit</b> 1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 36 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 36 and 41-43 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicant's cancellation of claims 1-35, 37-40 and 44-55, in the paper of amendment of claim 34, in the paper filed on 11/25/2008, is acknowledged. Claims 36 and 41-43 are still at issue and are present for examination.

Applicants' arguments filed on 11/25/2008 have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

### ***Specification***

The disclosure was previously objected to because of the following informalities:

Previously, applicant's specification stated that SEQ ID NO: 22 has Tyr in place of Phe at position 668 and shows the corresponding "Y" underlined on page 57, line 7. This numbering of the amino acid residues of SEQ ID NO: 22 on page 57 does not correspond to applicant's disclosure of SEQ ID NO: 22 in the sequence listing. Applicants have amended the specification on 4/10/2008 and 11/25/2008 such as on "Page 56, line 26, replace "668" with -665- . Applicant's amendment is acknowledged, however, it remains that applicants sequence listing for SEQ ID NO: 22 still describes this sequence as "...which Tyr is used in place of Phe at position 668". Thus applicant's specification continues to disagree with the description of the sequence of SEQ ID NO: 22.

Additionally, in a communication from this office sent to applicants on 10/27/2008, it was pointed out to applicants that their amendment of the specification was unclear on a number of bases.” The reply filed on 7/30/2008 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicants amendment of applicants specification on page 2 of applicants response is improper and unclear on at least two basis.:

“First applicant’s reference to paragraph number [0126] is unclear. It is suggested that applicants refer to paragraphs of applicant’s specification by page and line number of applicant’s specification. Second it is noted that applicants state "Please add the following new paragraph number [0126]", when it appears that applicants intent more likely is to replace the original paragraph with the "new" paragraph as opposed to adding the new paragraph.”

Applicants have not responded to this communication and applicants subsequent amendment of the specification on 11/25/2008, makes applicants intent even more unclear, as it appears that applicants are attempting to further amend this same paragraph refereed to earlier as paragraph [0126]’

Appropriate correction or explanation continues to be required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 36, 41-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 36 and 41 (42-43 dependent from) are indefinite in the recitation comprising or comprises "any one of amino acid sequences SEQ ID NO:22." As SEQ ID NO:22 comprises any number of smaller fragments or sequences in addition to the full length sequence of SEQ ID NO: 22, applicant's reference to any one of amino acid sequences in the plural is considered indefinite in that it is confusing and unclear. For the purpose of advancing prosecution, this reference is interpreted as comprising or comprises the amino acid sequence of SEQ ID NO: 22.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Hutson whose telephone number is 571-272-0930. The examiner can normally be reached on M-F, 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashaat T. Nashed can be reached on 571-272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rgH  
2/12/2009

/Richard G Hutson/  
Primary Examiner, Art Unit 1652